

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No.521/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2015-16)

The Deputy Commissioner of Income Tax, Corporate Circle-1(1) Chennai-600 034.	Vs	M/s. Avigna Housing Pvt. Ltd. Plot No.1822, 1 st Block, 13 th Main Road, Anna Nagar West. Chennai-600 040.
		PAN: AAKCA 6239J
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. G.Chandrababu, Sr.AR
प्रत्यर्थीकीओरसे/Respondent by	:	Mr.M.Karunakaran, Advocate

सुनवाईकीतारीख/Date of hearing	:	02.12.2020
घोषणाकीतारीख /Date of Pronouncement	:	31.12.2020

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the Revenue is directed against the order of the learned CIT(Appeals)-4, Chennai dated 28.12.2018 and pertains to assessment year 2015-16.

2. The Revenue has raised the following grounds of appeal:-

"1. The order of the Id. CIT(A) is contrary to law, facts and circumstances of the case.

2. The Ld.CIT(A) erred in giving relief to the assessee accepting Discount Cash Flow Method (DCF) valuation done by the assessee rather than valuation done by the Assessing Officer(AO) under Rule 11UA of the Income tax Rules, for calculation of Fair Market Value of shares (FMV) & deleting the addition of difference in FMV & actual price at which the shares are issued under section 56(2)(viib) of the Act.

3. The Ld,CIT(A) erred in giving relief to the assessee by holding that the AO was not justified in taking the book value of shares of the immovable property for valuation and should have taken the higher DCF method adopted value of the allotted shares as returned by the assessee since it was the higher valuation of the two methods expressly prescribed by the Act/rules when this finding of the Id.CIT(A) is in contravention of the provisions of section 56(2(viib) & Rule 11 UA, as nowhere in these provisions is it mentioned that higher valuation of two methods should be adopted for the purpose of arriving at the FMV

4. The LdCIT(A) erred in giving relief to the assessee without taking into consideration the ratio laid down in the decision of the Hon'ble ITAT., Delhi in the case of M/s Stryton Exim India Pvt Ltd Vs ITO in ITA No. 5982/Del/2018(AY 2014-15), wherein it has been held that objective evaluation of the valuation report submitted by the assessee deserves to be carried out

5. For these reasons, it is prayed that the order of the learned CIT(A) be set aside and that of Assessing Officer be restored.”

3. Brief facts of the case are that the assessee company is engaged in the business of selling DTCP approved plots filed its return of income for the assessment year 2015-16 on 05.10.2015 declaring total income of Rs.37,92,300/-. During the previous year relevant to assessment year 2015-16, the assessee has issued 835 equity shares @ ₹ 1,05,708/- per share with face value of ₹ 100 per share to Mr. N.Amrutesh Reddy. The said allotment has been made on the basis of valuation report obtained from Accountant under Rule 11UA, as per which Accountant has arrived

at the value of equity shares as on the date of issue on the basis of Discounted Cash Flow (DCF) method. During the course of assessment proceedings, the Assessing Officer, however, did not accept the value of shares arrived at by the assessee and according to him, book value of shares as per Rule 11UA is at ₹ 61,200/- and as against this assessee has issued shares at a premium of ₹ 1,05,708/- and thus, called upon the assessee to explain as to why shares issued at huge premium cannot be treated as income from other sources under the provisions of section 56(2)(viib) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). In response to the notice, the assessee submitted that it has arrived at value of shares as per prescribed method under Rule 11UA, where it was specifically provided for valuation of shares either on net asset value method or DCF method, as per the choice of the assessee and once assessee has chosen a particular method for valuation of shares, then Assessing Officer has no role to adopt a different method. The Assessing Officer was not convinced with the explanation furnished by the assessee and according to him, DCF method as provided under Rule 11UA is not appropriate for the assessee in the given facts and circumstances of the case, because this method can be used by company which are in total control of

business being in a position to project the income arising therefrom. He further was of the opinion that as per DCF method projection should be realistic and which is based on performance of the assessee including asset base and intangible assets owned. In the present case, on a perusal of valuation report submitted by the assessee, Accountant has relied upon the projections and financials given by the assessee to arrive at value of shares by discounting net earnings of future financial years in current value. However, on perusal of the actual financials of the assessee for the relevant period, there is a huge difference in actual earnings and projections considered for valuation of shares and hence, value arrived at by the assessee adopting DCF method is not giving correct price of shares as on the date of issue and accordingly, rejected the DCF method followed by the assessee and arrived at fair market value of shares on net asset value method at ₹ 61,200/- . Accordingly, excess premium charged over and above fair market value has been treated as income under section 56(2)(viib) of the Act.

4. Being aggrieved by the assessment order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee has reiterated its arguments made before

the Assessing Officer to justify issue of shares at premium of ₹ 1,05,708/-. The assessee further submitted that the company owns huge inventory of immovable property and market value of said asset as on valuation date itself works out to ₹ 1,03,018/- per share and hence, arriving at value of shares at ₹ 61,200/- on net asset value method by taking book value of assets is contrary to prescribed method for valuation of shares. The assessee further submitted that as per provisions of section 56(2)(viib) read with Rule 11UA, it is for the assessee to choose any one method provided under the Act for value of shares and the Assessing Officer does not have any role, except to examine the method selected by the assessee to arrive at value of shares. In this case, the Assessing Officer has altogether adopted a different method to determine value of shares as on the date of issue ignoring the fact that the statute does not permit such powers to Assessing Officer.

5. The learned CIT(A), after considering the relevant submissions of the assessee and by following the decision of ITAT., Mumbai Benches in the case of DCIT Vs.Ozoneland Agro P.Ltd., held that as per provisions of section 56(2)(viib), more particularly, Explanation thereto read with Rule 11UA, the Assessing

Officer has no power/ chance/option to choose his own method to arrive at value of shares, whereas the assessee has such choice of option to choose NAV/DCF method and once the assessee has selected a particular method, then the Assessing Officer has no power to reject the method chosen by the assessee. The learned CIT(A) further observed that the observations of the Assessing Officer that DCF method is not correct method under the given facts and circumstances of the case is misplaced, because when the statute itself permits the assessee to choose a particular method for valuation of shares and such method is based on approved share valuation method i.e. DCF method, the Assessing Officer cannot simply brush aside the method adopted by the assessee, because the value of shares as per the method selected by the assessee is more than the book value of shares as per net asset value method. The learned CIT(A) has discussed the issue in light of the decision of DCIT Vs.Ozoneland Agro P.Ltd., and come to the conclusion that as per amendment to Rule 11UA by the Finance Act, 2017 w.e.f. 01.04.2018 for the purpose of section 56(2)(viib) of the Act, it is very clear that value of immovable property have to be valued at value adopted by or assessed by any authority of the Government for the purpose of payment of stamp

duty. In this case, the Assessing Officer has adopted value of immovable property at book value under net asset value method and hence, the Assessing Officer has grossly erred in not considering method selected by the assessee for valuation of shares. Therefore, he opined that the Assessing Officer was not justified in taking book value of shares of the immovable property for valuation as against DCF method followed by the assessee which is one of the method prescribed under Rule 11UA and approved by the Accountant as mandated under law. Accordingly, deleted the additions made towards excess premium on issue of shares under section 56(2)(viib) of the Act.

6. The learned DR submitted that the learned CIT(A) has erred in deleting the additions made by the Assessing Officer towards excess premium on issue of shares under section 56(2)(viib) of the Act by accepting discounted cash flow method selected by the assessee for valuation of shares, as against value adopted by the Assessing Officer under net asset value method as per Rule 11UA. The learned DR further submitted that the learned CIT(A) has erred in holding that Assessing Officer was not justified in taking book value of shares of immovable property and should have taken

the higher value of DCF method adopted by the assessee in contravention of provisions of section 56(2)(viib) of the Act and Rule 11UA, as nowhere in these provisions, it is mentioned that higher valuation of the two methods to be adopted for the purpose of arriving at fair market value. The learned CIT(A) erred in not considering the ratio laid down in the decision by the ITAT., Delhi Benches in the case of M/s Stryton Exim India Pvt Ltd Vs ITO in ITA No. 5982/Del/2018, wherein it has been held that objective evaluation of valuation report submitted by the assessee deserves to be carried out.

7. The learned AR, on the other hand, submitted that the learned CIT(A) has brought out clear facts to the effect that Assessing Officer has adopted net asset value method contrary to the provisions of section 56(2)(viib) of the Act read with Rule 11UA(2), while allowing relief to the assessee towards addition made on account of excess premium charged on issue of shares and such finding of the learned CIT(A) is in accordance with law. Therefore, there is no merit in the arguments taken by the learned DR that the findings recorded by the learned CIT(A) are contrary to the provisions of section 56(2)(viib) of the Act read with Rule 11UA. The

learned AR further submitted that it is well settled principle of law that provisions of section 56(2)(viib) of the Act read with Rule 11UA, gave option to the assessee to choose a particular method for valuation of shares and once a method is selected by the assessee, then the Assessing Officer has no role to adopt different method for valuation of shares. If at all the Assessing Officer is not satisfied with the value arrived at by the assessee, he can verify the method selected for valuation of shares and relevant documents supporting such valuation, but at no time, he can reject the method selected by the assessee and choose different method for valuation of shares. The AR further submitted that in this case, the assessee has followed DCF method which is supported by valuation report of Accountant, where value of shares has been arrived at on the basis of future projections of the company, which may not be equal to the actual revenue earned for the relevant assessment year, but what is relevant for DCF method is discounted cash flow of future financial years and such cash flow is estimated on realistic method. In this case, the assessee has arrived at discounted cash flow on the basis of future earning capacity of the company and value of shares arrived at on the basis of such method is almost equal to book value of shares arrived at as per Rule 11UA, and therefore, value arrived

at by Assessing Officer at ₹ 61,200/- on book value of assets is contrary to Rule 11UA of I.T. Rules, 1962. The learned CIT(A), after considering relevant facts has rightly deleted additions made by the Assessing Officer and his order should be upheld.

8. We have heard both the parties, perused the material available on record and gone through the orders of authorities below. The assessee has issued shares at premium and such shares has been issued on the basis of valuation report as on the date of issue of shares by following discounted cash flow method as prescribed under Rule 11UA of Income Tax Rules, 1962. The assessee has arrived at value of shares at ₹ 1,10,069/- per share. According to the assessee, value arrived at by DCF method is correct value of shares as on the date of issue, because even if it is considered on net asset value method, the value for equity shares works out to ₹ 1,00,380/-, if stock in trade held by the assessee is valued at market value or value as per stamp duty purposes. Therefore, it is incorrect on the part of the Assessing Officer to come to the conclusion that value arrived at by the assessee under DCF method is not showing correct value of shares as on the date of issue of shares. The provisions of section 56(2)(viib) of the Act,

deals with issue of shares set of premium. As per said provisions, if a company issues share set of premium and fair market value of shares as on the date of issue is less than the issue price, then difference may be treated as income to be taxed under section 56(2)(viib) of the Act. As per Explanation provided to section 56(2)(viib) of the Act, fair market value of shares has been defined, as per which value of shares shall be valued as may be determined in accordance with such method as may be prescribed or as may be substantiated by the company to the satisfaction of the Assessing Officer, based on the value on the date of issue of shares of its assets, including intangible assets being good will, knowhow etc. whichever is higher. Similarly, Rule 11UA prescribed method for valuation of shares of listed and non-listed companies. As per Rule 11UA, unquoted equity shares can be valued on net asset value method or as per discounted free cash flow method determined by the Accountant or merchant banker. As per the said provisions, once assessee chooses a particular method, Assessing Officer has role to change method selected by the assessee, but he can very well verify the method selected by the assessee with relevant supporting documents. In this case, assessee has selected DCF method as prescribed under Rule 11UA for valuation of shares and such

valuation has been arrived at on the basis of future earning capacity of the company as per which, value of shares has been worked out at ₹ 1,10,069/- per share. The assessee justifies value of shares arrived at by DCF method on the basis of assets owned by the company including stock in trade being immovable property and value of such asset as on the date of valuation works out to ₹ 1,00,380/- per share. Accordingly, the assessee has taken average of two and has worked out ₹ 1,05,194/- per share which is almost equal to value arrived at under DCF method. The Assessing Officer has rejected DFC method selected by the assessee and adopted net asset value method and for this purpose, he has taken book value of asset as on the date of value of shares and worked out to ₹ 61,200/- per equity shares. According to the Assessing Officer, the method selected by the assessee is not a correct method in the given facts and circumstances of the case, because DCF method is suitable only if companies which are in total control the business being in a position to project income on the basis of asset and intangibles. Since, the assessee is not carrying any intangibles, he was of the opinion that DCF method followed by the assessee does not give correct value of shares.

9. We have given our thoughtful consideration to the arguments on both sides, in light of facts brought out by the authorities including valuation report submitted by the assessee under DCF method. DCF method is one of the trusted methods for valuation of shares and said method is prescribed under Rule 11UA of Income Tax Rules, 1962. Therefore, the Assessing Officer cannot brush aside DCF method for simple reason that assessee does not carry any intangibles in its business. Further, once assessee chooses a particular method and said method is approved method for valuation of shares, then Assessing Officer cannot change the method adopted by the assessee for valuing market value of shares for discounted cash flow method to net asset value method, because the statute does not permit the Assessing Officer to choose a method other than the method selected by the assessee. If at all the Assessing Officer was not satisfied with the value arrived at by the assessee, then he can very well examine valuation of shares and in case any difference in value of shares, he can rework the share price for the purpose of valuation, but at no time, he can adopt different method from the method adopted by the assessee for valuation of shares. In this case, on perusal of facts, we find that assessee has adopted DCF method, which is one of the prescribed

method under Rule 11UA . No doubt, there may be a difference in projections considered by the assessee for valuation of shares when compared to actual financial for relevant financial year, but that itself is not a ground for rejection of DCF method, because primarily DCF method follows projected financial of the company for future years which may not be equal to actual financial of the company for the relevant financial years. But what is relevant to see is whether the projection worked out by the assessee is based on some degree of estimation or not. In this case, the Assessing Officer has not pointed out any discrepancy or inconsistency in the projections adopted by the assessee for discounted cash flow method. Therefore, we are of the considered view that Assessing Officer has erred in rejection of DCF method and adopting net asset value method for the purpose of valuation of shares. This view is fortified by the decision of Hon'ble Bombay High Court in the case of Vodafone Mpesa Ltd., vs. PCIT, (2018) (256 Taxman 240), where the Hon'ble Court held that Assessing Officer cannot change the method adopted by the assessee for valuing market value of shares from DCF to net asset value method. The ITAT., Mumbai Benches in the case of Karmic Labs Pvt. Ltd. vs. ITO in ITA No.3955/Mum/2018 has taken similar view and held that Assessing

Officer has no power to change the method adopted by the assessee from one method to another method provided under Rule 11UA.

10. In this view of the matter and considering the facts and circumstances of this case, we are of the considered view that fair market value of shares considered by the assessee under DCF method is one of the accepted method of valuation of shares under Rule 11UA and such value of shares is supported by necessary supporting evidences including valuation report as on the date of issue of shares. The value adopted by the Assessing Officer under net asset value method even though a prescribed method does not give correct value of shares in the given facts and circumstances of the case, because amended provisions of Rule 11UA by the Finance Act, 2017 w.e.f 01.04.2018 has permitted valuation of immovable property as per guidance value for the purpose of valuation of shares. In this case, if stock in trade held by the assessee in the form of immovable property has been valued as per guidance value, then value of one equity share works out to ₹ 1,00,380/-, which is almost equal or nearer to value arrived at by the assessee under DCF method. Therefore, value of shares arrived at

by Assessing Officer under net asset value method cannot be accepted. Therefore, we are of the considered view that the learned CIT(A), after considering the relevant facts has rightly deleted the additions made by the Assessing Officer towards excess premium charged on issue of shares u/s.56(2)(viib) of the Act. Hence, we are inclined to uphold the findings of the learned CIT(A) and dismiss the appeal filed by the Revenue.

12. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 31st December, 2020

Sd/-
(वी. दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member
चेन्नई/Chennai,
दिनांक/Dated 31st December, 2020
DS

Sd/-
(जी.मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/G